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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,511	06/15/2001	Carlos G. Gonzalez-Rivas	6511	8335
22922	7590	09/27/2010		
REINHART BOERNER VAN DEUREN S.C. ATTN: LINDA KASULKE, DOCKET COORDINATOR 1000 NORTH WATER STREET SUITE 2100 MILWAUKEE, WI 53202			EXAMINER	BOVEJA, NAMRATA
		ART UNIT	PAPER NUMBER	
		3622		
		NOTIFICATION DATE	DELIVERY MODE	
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1                   UNITED STATES PATENT AND TRADEMARK OFFICE

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4                   BEFORE THE BOARD OF PATENT APPEALS  
5                   AND INTERFERENCES

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8                   *Ex parte* CARLOS G. GONZALEZ-RIVAS

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11                   Appeal 2009-011637  
12                   Application 09/882,511  
13                   Technology Center 3600

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16                  Before JAMES D. THOMAS, ANTON W. FETTING, and  
17                  JOSEPH A. FISCHETTI, *Administrative Patent Judges.*  
18                  FETTING, *Administrative Patent Judge.*

19                   DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

1 STATEMENT OF THE CASE<sup>2</sup>

2 Carlos G. Gonzalez-Rivas (Appellant) seeks review under  
3 35 U.S.C. § 134 (2002) of a final rejection of claims 1-28, the only claims  
4 pending in the application on appeal. We have jurisdiction over the appeal  
5 pursuant to 35 U.S.C. § 6(b) (2002).

6 The Appellant invented a way of using a displayed website logo on a  
7 television commercial to let consumers log onto the website and participate  
8 in interactive online contests (Specification 1:¶ 0001).

9 An understanding of the invention can be derived from a reading of  
10 exemplary claim 1, which is reproduced below [bracketed matter and some  
11 paragraphing added].

12 1. A method of increasing consumer awareness of products or  
13 services which are advertised in television commercials,  
14 comprising:

15 [1] enhancing a plurality of television commercials by  
16 displaying a marketing website logo during each of said  
17 plurality of enhanced television commercials;

18 [2] providing a marketing website which is associated with and  
19 identified by said marketing website logo and which is  
20 accessible by consumers;

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<sup>2</sup> Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed September 5, 2008) and the Examiner's Answer ("Ans.," mailed March 6, 2009).

1           [3] displaying to a consumer who has entered said marketing  
2           website in response to viewing a particular enhanced television  
3           commercial

4                 a list of television networks on which enhanced  
5                 television commercials have aired, and

6                 prompting the consumer

7                 to select the particular television network on which the  
8                 consumer viewed the particular enhanced television  
9                 commercial;

10          [4] displaying to the consumer

11                 a list of television shows broadcasted by the particular  
12                 television network during which television shows  
13                 enhanced television commercials have been broadcasted,  
14                 and

15                 prompting the consumer

16                 to select the particular television show during which the  
17                 consumer viewed the particular enhanced television  
18                 commercial;

19          [5] displaying to the consumer

20                 a list of enhanced television commercials which were  
21                 broadcasted during the particular television show, and

22                 prompting the consumer

23                 to select the particular enhanced television commercial;  
24                 and

25          [6] providing a game or contest for the consumer to play

26                 which game or contest provides information on or relates  
27                 to the particular product or service advertised by the  
28                 particular enhanced television commercial.

1       The Examiner relies upon the following prior art:

Lesandrini   US 2003/0036944 A1   Feb. 20, 2003

*Bacardi Brings Out the Bottle in Cable-TV Ad for Amaretto - Spot Is Firm's First to Blatantly Display Product* O'Connell May 2001

*Job-Hunting Web Sites' Ads Will Duel at Super Bowl* Silverman et al. Jan. 2001

*Put your hiring into high gear! Introducing Monster Momentum™*  
<http://www.web.archive.org/web/20010418150929/momentum.Monster.com/> (last visited Apr. 18, 2001).

9       Claim 7 stands rejected under 35 U.S.C. § 112, second paragraph, as  
10 failing to particularly point out and distinctly claim the invention.<sup>3</sup>

11       Claims 1-3, 6, and 8-11 stand rejected under 35 U.S.C. § 103(a) as  
12 unpatentable over O'Connell, Silverman, and Official Notice.

13       Claims 4, 5, and 7 stand rejected under 35 U.S.C. § 103(a) as  
14 unpatentable over O'Connell, Silverman, Monster.com, and Official Notice.

15       Claims 12-26 stand rejected under 35 U.S.C. § 103(a) as unpatentable  
16 over O'Connell, Silverman, Lesandrini, and Official Notice.

17       Claim 27 stands rejected under 35 U.S.C. § 103(a) as unpatentable over  
18 O'Connell, Silverman, Monster.com, and Official Notice.

19       Claim 28 stands rejected under 35 U.S.C. § 103(a) as unpatentable over  
20 O'Connell, Monster.com, and Official Notice.

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<sup>3</sup> A similar rejection of claim 4 was withdrawn at Answer 28.

## ISSUES

2 The issue as to indefiniteness hinges on whether one of ordinary skill  
3 would have understood how a logo could identify a type of printed material.  
4 The issue of obviousness hinges on whether the Examiner presented  
5 evidence that the nested selection in the claims were known to those of  
6 ordinary skill.

## FACTS PERTINENT TO THE ISSUES

8 The following enumerated Findings of Fact (FF) are believed to be  
9 supported by a preponderance of the evidence.

10        *Facts Related To Differences Between The Claimed Subject Matter And*  
11        *The Prior Art*

12 01. The Examiner presented no findings as evidence that it was  
13 known to use a series of nested prompts to obtain information.

## ANALYSIS

*particularly point out and distinctly claim the invention*

17 Claim 7 recites displaying a readily recognizable logo or other indicia  
18 that identifies a type of printed material. The Examiner found that a logo  
19 does not identify the purpose of a printed material. Answer 28-29. The  
20 Appellant responds that Fig. 8 Reference 102 shows a biller logo that  
21 identifies a bill as a type of printed material. Appeal Br. 25. We agree that  
22 the contents of a logo can express many things; including a type of printed  
23 material and that the figure in the Appellant's disclosure is such an example.

1       *Claims 1-28 rejected under 35 U.S.C. § 103(a) as unpatentable over*  
2       *O'Connell, Official Notice, and various combinations of Silverman,*  
3       *Monster.com, and Lesandrini.*

4       All of the claims recite, using a website and indicia, providing  
5 information, a contest, or a game. The Examiner found that the references  
6 described these limitations. All of the claims except for claim 27, recite a  
7 three step nested query to determine how a commercial was found. Claim  
8 27 recites that the query occurs with a series of screens. The Examiner took  
9 Official Notice of the notoriety of asking how a consumer found out about a  
10 marketing promotion. The Examiner also took notice that it was predictable  
11 to point to a query result with a mouse. Answer 4-6.

12       The Appellant argues that there is a lot more in the claims and so the  
13 Official Notice is improper and the Examiner failed to present a *prima facie*  
14 case. Appeal Br. 18-23. The Examiner responded that the Appellant's  
15 traversal of the Official Notice is improper. Answer 26. While we agree  
16 with the notoriety of querying for how a consumer found out about a  
17 promotion, and that the Appellant has not properly traversed the Official  
18 Notice, the Examiner's response misses the point.

19       The Examiner presented no findings as evidence that it was known to  
20 use a series of nested prompts to obtain information. FF 01. This is the  
21 import of the Appellant's arguments, *viz.* there is a lot in those limitations  
22 (*e.g.* steps [3]-[5] of claim 1) that the Examiner made no findings toward.  
23 We must agree with the Appellant that the Examiner failed to present a  
24 *prima facie* case of obviousness as not all the limitations were shown to be  
25 known.

## **CONCLUSIONS OF LAW**

Rejecting claim 7 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention is in error.

Rejecting claims 1-28 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Official Notice, and various combinations of Silverman, Monster.com, and Lesandrini is in error.

## DECISION

To summarize, our decision is as follows.

- The rejection of claim 7 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention is not sustained.
  - The rejection of claims 1-3, 6, and 8-11 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, and Official Notice is not sustained.
  - The rejection of claims 4, 5, and 7 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Monster.com, and Official Notice is not sustained.
  - The rejection of claims 12-26 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Lesandrini, and Official Notice is not sustained.
  - The rejection of claim 27 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Monster.com, and Official Notice is not sustained.

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- 1        • The rejection of claim 28 under 35 U.S.C. § 103(a) as unpatentable  
2           over O'Connell, Monster.com, and Official Notice is not sustained.

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4                          REVERSED  
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9

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